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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
 ORACLE AMERICA, INC., a Delaware
 corporation; and ORACLE INTERNATIONAL
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
 AND SETH RAVIN, an individual,

Defendants.

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Case No. 2:10-cv-0106-LRH-PAL

**ORACLE'S OPPOSITION TO
 RIMINI'S CONDITIONAL CROSS-
 MOTION FOR RECONSIDERATION
 IN ANY NEW TRIAL**

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I. INTRODUCTION

Oracle should not have had to spend a single dollar drafting an opposition to Defendants Rimini Street, Inc. and Seth Ravin’s (together, “Rimini’s”) conditional cross-motion for reconsideration in any new trial, Dkt. 916 (“Mot.”). The first page of the motion states that “*if Oracle does not file a motion for a new trial, then this motion is moot, and Rimini will withdraw it.*” *Id.* at 1:4-5 (emphasis supplied). Oracle did not file a motion for a new trial, and thus Rimini’s motion is moot on its own terms. Nonetheless, when Oracle asked Rimini to honor its commitment to the Court and withdraw its motion, Rimini refused. Declaration of Thomas S. Hixson in Support of Oracle’s Opposition (“Hixson Decl.”), Ex. A. On this ground alone, the Court should summarily deny Rimini’s motion. Forcing Oracle to respond to a motion that is moot according to its own terms is yet another example of why Oracle should be awarded the fees and costs that it incurred over the last six years dealing with Rimini’s wasteful litigation tactics. *See* Dkt. 917 (Fees Mot.).

Rimini’s motion should also be denied for Rimini’s failure to meet, or even acknowledge, the clear and established standard for a motion for reconsideration. Rimini includes in its motion almost every ruling that went against it all the way from initial pleadings through trial. For most, Rimini provides no reason or justification for seeking reconsideration. Rimini does not even identify many of the rulings it seeks to overturn, for example, seeking reconsideration of an unspecified “number of other objections [Rimini made] to the [Court’s jury] instructions.” Mot. at 7:26-27. For the rest, Rimini simply repeats previously rejected arguments. Indeed, Rimini’s inability to provide legitimate grounds for reconsideration confirms that the rulings Rimini seeks to overturn were correctly decided by the Court.

Rimini’s motion is meritless and should be denied.

II. RIMINI’S MOTION SHOULD BE DENIED AS PROCEDURALLY IMPROPER

Rimini’s motion is procedurally improper and should be denied on that basis alone. Rimini did not move for a new trial, and “does not seek a new trial.” Mot. at 1. Instead, Rimini *conditioned* its motion on *Oracle’s* filing a motion for a new trial and repeats this express condition throughout its motion. *E.g.*, Mot. at 1 (“Rimini files this conditional motion *solely* to

1 preserve its rights and respectfully requests that this Court dismiss it in the event that *Oracle's*
 2 new trial motion is denied.”) (emphasis supplied); Dkt. 916-1 (Prop. Order) (providing the Court
 3 with two options conditioned only on Oracle moving for a new trial).¹

4 Because Rimini's condition is not satisfied, *i.e.* Oracle did not move for a new trial,
 5 Rimini's motion should be denied as moot. *The Cayuga Indian Nation of N.Y. v. Pataki*, 188 F.
 6 Supp. 2d 223, 256 (N.D.N.Y. 2002) (denying conditional motion as moot where motion was
 7 conditioned on court granting a new trial “at the request of [Defendant] or any other party” and
 8 condition was not met). A motion for reconsideration on these issues is also procedurally
 9 improper because *no new trial has been granted*, and neither the Court nor the parties knows what
 10 issues will be in play in the event of a new trial. *Oracle USA, Inc. v. SAP AG*, No. 07-1658, 2011
 11 WL 3862074, *13 (N.D. Cal. Sept. 1, 2011) (denying conditional motion to permit new evidence
 12 in any new trial as “premature”), *overruled on other grounds*, 765 F.3d 1081 (9th Cir. 2014); *cf.*
 13 *U.S. v. Namvar*, 498 Fed.Appx 749, 751 (9th Cir. 2012) (declining to “reach [party's] objections
 14 to evidentiary rulings and jury instructions which may not arise on a retrial”); *Waters v. Howard*
 15 *Sommers Towing, Inc.*, No. 2:10-cv-05296, 2014 WL 5846758, *3 (C.D. Cal. Nov. 10, 2014)
 16 (“plaintiff's motion is hereby DENIED as moot because it pertains to matters that are not the
 17 subject of the upcoming trial”).

18 **III. RIMINI'S MOTION WHOLLY FAILS TO MEET THE REQUIRED STANDARD** 19 **FOR A MOTION FOR RECONSIDERATION**

20 Rimini does not even attempt to meet the standard for seeking reconsideration of a ruling.
 21 A motion for reconsideration is an “extraordinary remedy, to be used sparingly in the interests of
 22 finality and conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir.
 23 2003). Reconsideration is appropriate *only* if this Court “(1) is presented with newly discovered

24 ¹ See also Mot. at 1:14 (“If this Court were to order a new trial as Oracle requests, it should
 25 correct the following . . .”), 1:25 (“[A]ny new trial that is ordered at Oracle's request . . .”), 3:6
 26 (“[A]ny new trial that is ordered at Oracle's request should proceed without . . .”), 3:21-22
 27 (“[A]ny new trial granted at Oracle's request must include . . .”), 4:10 (“If Oracle's request for a
 28 new trial is granted . . .”), 6:7-8 (“If this Court grants Oracle's request for a new trial, Rimini
 should be granted . . .”), 7:23-24 (“[I]n the event a new trial is granted at Oracle's request . . .
 .”), 8:7 (“In the event the Court orders a new trial at Oracle's request . . .”).

evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Reconsideration is not “an avenue to re-litigate the same issues and arguments upon which the court has already ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005). Rather, a motion for reconsideration “must set forth ‘some valid reason why the court should reconsider its prior decision’ and set ‘forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision.’” *Crowley v. U.S. Bankr. Court, Dist. of Nevada*, 3:12-cv-647, 2012 WL 6513149, *1 (D. Nev. Dec. 12, 2012) (Hicks, J.) (quoting *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003)).

As described below, Rimini provides no new facts, authority, or other justification in support of any of its requests. Rimini does not even try. It does not cite a single case in support of any of its myriad requests for reconsideration. *See* Mot. at ii (Table of Authorities). Nor does Rimini cite a single new fact in support of any of its requests.² Rimini’s motion is nothing more than an improper attempt to “re-litigate the same issues and arguments upon which the court has already ruled.” *Brown*, 378 F. Supp. 2d at 1288. It should be denied.

IV. RIMINI CHALLENGES ORDERS THAT WERE CORRECTLY DECIDED ON THE MERITS

A. The Court Made Correct Rulings Regarding TomorrowNow, CedarCrestone, Mr. Grigsby, and Attorney Letters

Without providing a single new fact or citing any authority, much less any *new* authority, Rimini first seeks reconsideration of a group of rulings that were the subject of over 70 pages of briefing before and during trial. *See* Dkts. 559, 605, 652, 684, 697, 741, 766, 768, 773, 793, 797, 799, 825, 834. Rimini’s arguments, which have already been considered, should be rejected again. *Crowley*, 2012 WL 6513149, at *1 (motion for reconsideration “must set forth ‘some valid reason why the court should reconsider its prior decision’ and set ‘forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision’”).

First, the Court properly admitted evidence about TomorrowNow at trial. The evidence

² Rimini fails to cite to any fact not already in the record, as evidenced by its failure to attach a supporting declaration attesting to any new facts or documents.

1 was directly relevant to numerous issues to be decided, including Oracle's interference and
 2 willfulness claims. Dkt. 605; *see also, e.g.*, Trial Transcript ("Tr.") 391:25-394:13, 396:19-
 3 397:18, 418:9-419:20. Moreover, the Court took steps to limit the potential for any prejudice.
 4 The Court did not permit any evidence regarding the resolution of the TomorrowNow lawsuit, or
 5 any admissions SAP or TomorrowNow made during the lawsuit. Tr. 402:24-403:12, 404:4-6.
 6 The Court also did not permit any evidence about TomorrowNow's criminal copyright and
 7 computer fraud guilty plea. *Id.* The Court also took the extra step of instructing the jury that it
 8 was not "to infer that, because Seth Ravin was at one time associated with TomorrowNow, he,
 9 Rimini Street, or any individual employed by Rimini did, or was likely to have done, the things
 10 that Oracle contends." Dkt. 880 at 21. The Court's action was sufficient to prevent any
 11 prejudice, as the jury is presumed to have followed that instruction. *Estelle v. McGuire*, 502 U.S.
 12 62, 75 & n.1 (1991) (noting "the trial court guarded against possible misuse of the instruction by
 13 specifically advising the jury that the '[prior injury] evidence, if believed, was not received, and
 14 may not be considered by you[,] to prove that [McGuire] is a person of bad character or that he
 15 has a disposition to commit crimes'"); *Greer v. Miller*, 483 U.S. 756, 766 n.8 (1987) (court must
 16 assume a jury's compliance with instructions absent an "overwhelming probability" of its
 17 inability to do so); *Brooke Group, Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 243
 18 (1993) ("[A] reasonable jury is presumed to know and understand the law, the facts of the case,
 19 and the realities of the market.").

20 Second, it was appropriate for Oracle's experts to opine that TomorrowNow and
 21 CedarCrestone were infringing alternatives in the market. As the Court recognized, there is
 22 sufficient evidence that both are true. Tr. 1643:22-1644:1 ("There is evidence before the Court,
 23 not before the jury, with regard to CedarCrestone but certainly with regard to TomorrowNow,
 24 that would permit inferences that there would be reason that TomorrowNow should not be
 25 considered as a noninfringing entity."). Both companies had local copies of Oracle's PeopleSoft
 26 software on their systems (Dkt. 923, Exs. 22 & 23 (TN Stips); Dkt. 500, Ex. J (CedarCrestone
 27
 28

Decl.)³), and no PeopleSoft license allowed for them to reside there. Dkt. 599 (Stip re PeopleSoft licenses) ¶ 3. Oracle’s experts thus had an adequate foundation to testify about “who they did not consider [to be an alternative provider] because [the experts] did not feel [TomorrowNow and CedarCrestone] qualified as noninfringing alternatives.” Tr. 1644:7-12.⁴ In addition, the expert testimony about non-infringing alternatives was necessary to rebut Rimini’s claims that TomorrowNow and CedarCrestone were available alternatives in the market that could be used to reduce damages. *E.g.*, Tr. 2414:21-2416:2 (Rowe); *see also* Dkt. 824 at 6-7 (describing counsel’s argument to the jury re same). Finally, the Court told Rimini that “[t]he extent to which Rimini cares to cross-examine [the experts about such testimony], of course, is completely up to counsel for Rimini.” Tr. 1644:10-12. Unsurprisingly, Rimini never took advantage of that opportunity. The Court properly allowed well-grounded testimony regarding whether TomorrowNow and CedarCrestone were available non-infringing alternatives.

Third, the Court properly admitted testimony from Mr. Grigsby. His copying and distribution of Oracle copyrighted material were directly relevant to Oracle’s copyright claim. Dkt. 721 at 7:10-8:3; *see also* Dkt 697 at 15:13-16:23. By claiming there is no misappropriation or trade secret claim in this case, Rimini simply rehashes arguments it made in a motion *in limine* and that were properly rejected by the Court. *Id*; *see also* Dkt. 652 at 13:24-15:3. Rimini provides no basis to seek reconsideration now.

Finally, the Court properly excluded evidence from Mr. Simmons and attorney letters that

³ Prior to trial, these documents were marked by Plaintiffs as PTXs 1483, 1484, and 5365, respectively.

⁴ The legal significance of this evidence in determining lost profits causation for infringement cannot be in dispute. *IGT v. Alliance Gaming Corp.*, No. 2:04-cv-1676, 2008 WL 7084605, *5 (D. Nev. Oct. 21, 2008) (only “acceptable *noninfringing* substitutes” considered in patent lost-profits calculations) (emphasis added); *VNUS Med. Techs., Inc. v. Diomed Holdings, Inc.*, No. 05-2972, 2007 WL 3096586, at *1 (N.D. Cal. Oct. 22, 2007) (same); *Polaroid Corp. v. Eastman Kodak Co.*, No. 76-1634-MA, 1990 WL 324105, at *13 (D. Mass. Oct. 12, 1990) *amended*, 1991 WL 4087 (D. Mass. Jan. 11, 1991) (when calculating lost profits, “[t]he inquiry [into substitutes] is quite narrow; acceptable substitutes are those products which offer the key advantages of the patented device but do not infringe.”); *see also State Indus., Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1578 (Fed. Cir. 1989) (discounting “other competitors” if the court was correct that they “were likely infringers”).

1 Rimini claims were relevant to Rimini's state of mind when it committed copyright infringement.
 2 As Oracle explained during trial, CedarCrestone's conduct could not be relevant to Rimini's state
 3 of mind unless Rimini knew of CedarCrestone's conduct *at the time it was committing copyright*
 4 *infringement*. Tr. 2078:24-2079:6; *see also* Dkt. 825 at 2.⁵ Rimini never laid that foundation
 5 (because it could not). And as the Court correctly found, the attorney letters were "rank hearsay"
 6 that were "irrelevant to the true evidentiary issues in this case." Tr. 898:11-17; *see also* Dkt. 799.
 7 Because Rimini had no advice of counsel defense, those letters had no relevance at trial even if
 8 the Court were to ignore the prejudice they would cause. Tr. 897:18-898:20; *see also* Dkt. 799.

9 **B. The Court Correctly Excluded Post-February 2014 Conduct**

10 This is Rimini's fourth attempt to insert a supposedly new 2014 support process into a
 11 case about Rimini's 2006-2011 conduct. When Rimini first asked the Court in 2014 to reopen
 12 discovery regarding its post-2011 conduct, Magistrate Judge Leen properly held that "the case
 13 will remain as it was put in at the close of discovery, not thereafter." Dkt. 515 at 3. Rimini
 14 recognized its defeat, did not appeal Magistrate Judge Leen's order,⁶ and instead filed the *Rimini*
 15 *II* case, in which Rimini seeks a declaratory judgment that the same allegedly new 2014 support
 16 process is non-infringing. Ruling on the parties' motions *in limine*, the Court agreed with
 17 Magistrate Judge Leen's approach, finding that evidence of Rimini's 2014 support process was
 18 "not relevant to any claim or issue in this action." Dkt. 723 at 3. The Court found that it was
 19 "speculative" that the new process was non-infringing, and that the new support process would be
 20 addressed by *Rimini II*. *Id.*

21
 22 ⁵ As Oracle also explained, the testimony was also prejudicial with respect to causation and
 23 damages, and allowing the testimony would have been fundamentally inconsistent with the
 24 Court's ruling with respect to the inadmissibility of SAP TomorrowNow's infringement. Tr.
 2081:7-2084:10; *see also* Dkt. 825 at 4-5.

25 ⁶ Magistrate Judge Leen's order is not subject to further review. Fed. R. Civ. P. 72(a) ("A party
 26 may serve and file objections to the order within 14 days after being served with a copy. A party
 27 may not assign as error a defect in the order not timely objected to."); Local Rule § IB 3-1; *see*
 28 *Bell v. Salazar*, No. 2:12-cv-01414, 2013 WL 2665208, *1 (E.D. Cal. June 12, 2013) (party
 waived its right to challenge the Magistrate Judge's order when objections were untimely under
 Rule 72(a)); *Evans v. Alliedbarton Sec. Servs., LLP*, No. 08-4993, 2009 WL 5218010, at *4 (N.D.
 Cal. Dec. 31, 2009), *aff'd*, 447 F. App'x 838 (9th Cir. 2011) (same).

Rimini now argues, as it did during trial when it first sought reconsideration of the Court's ruling (Dkt. 845), that Oracle opened the door to this evidence through its claim of willful infringement. But as the Court acknowledged at trial, Rimini's 2014 conduct has no bearing on whether Rimini's 2011 conduct was willful. Tr. 754:6-20 ("And, frankly, I'm unimpressed that he changes his business practice after the Court has ruled that he's committed copyright infringement in various ways [in 2014], that he's following the order of the Court, essentially, at the time he does that. That[] doesn't belong in front of this jury, and particularly in light of the fact that it comes some three, almost three and a half years later, after the time period in question which is present here."). Thus the jury was not prejudiced by the correct exclusion of Rimini's post-February 2014 conduct, and indeed, allowing Rimini to introduce that evidence when discovery into the conduct had yet to begin would have prejudiced Oracle.

C. Ms. Dean's Testimony Was Proper, and Rimini Waived Any Objection

In Section II.A.3 of its motion, Rimini requests that the Court reconsider every single ruling it made admitting any of the opinions of Oracle's damages expert, Elizabeth Dean. Mot. at 3:24-4:13. For most of these requests, Rimini does not even pretend to meet the standard for reconsideration, simply referring to its previous argument. *See, e.g.*, Mot. at 4:11-13 ("Ms. Dean's testimony on lost profits and infringer's profits should be excluded *for the reasons set forth in Rimini's motion to exclude that testimony.*") (emphasis supplied). Rimini's request should be denied. *Brown*, 378 F. Supp. 2d at 1288 ("reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already ruled").

Although it never makes an explicit request (Mot. at 3:24-4:5), Rimini seems to imply the Court should reconsider allowing Ms. Dean to testify about the value of use measure of Oracle's damages from Rimini's copyright infringement. But there is nothing to "reconsider," because Rimini never objected to the testimony it now complains about, waiving all objections. *See* Tr. 1959:3-11; *see also Kaiser Steel Corp. v. Frank Coluccio Constr. Co.*, 785 F.2d 656, 658 (9th Cir. 1986) (failure to object constitutes waiver absent showing of fundamental or plain error); *Bird v. Glacier Elec. Coop., Inc.*, 255 F.3d 1136, 1145-48 (9th Cir. 2001) (same).

D. Rimini's Attempt to seek Reconsideration of a Laundry List of "Other Evidentiary Rulings" Should Be Rejected

In Section II.A.4 of Rimini's motion, Rimini lists thirteen evidentiary rulings, claims it seeks reconsideration of them, but provides no explanation, legal or factual, for why any of the rulings were not correctly decided. Rimini's failure to provide any explanation alone requires denial. *Crowley*, 2012 WL 6513149 at *1 (motion for reconsideration "must set forth 'some valid reason why the court should reconsider its prior decision' and set 'forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision'").

Moreover, twelve of Rimini's issues were the subject of extensive briefing in the parties' motions *in limine* (Dkts. 648, 652, 690, 695), and the Court's well-reasoned orders on those issues remain correct. Dkts. 721, 723. With regards to the last issue—the Court's purported "exclusion of evidence of the hostile takeover of PeopleSoft by Oracle" (Mot. 4:17-18)—Rimini's complaint is the result of its own failure, not any Court ruling. The Court asked Rimini: "What relevancy does this line [of questioning] have, counsel?" Tr. 956:2-15. Rimini never provided a substantive response, instead volunteering to "move on." *Id.* The relevance of Rimini's questions was questionable at best, and they appeared to be unduly prejudicial, as Rimini's counsel acknowledged when he decided to cease his line of questioning on this issue.

E. The Court Correctly Allowed Oracle To Supplement Its Expert Report

The Court correctly denied Rimini's motion to preclude Oracle from supplementing its expert report to include updated lost profits numbers based on the passage of time between close of expert discovery and trial. Dkt. 669. The Court already correctly found that the "supplementation, although technically a late disclosure under Rule 26(a), would be harmless in the present action and would not prejudice defendants." Dkt. 669 at 4:12-14. The Court's Order allowed Rimini to depose Ms. Dean again before the trial, and it allowed Rimini's expert to submitted a rebuttal report to Ms. Dean's updated report. *Id.* at 4:20-5:2. Rimini did both, and never claimed any prejudice thereafter.

Seeking reconsideration, Rimini now presents no new evidence or case law on the procedural issue of Oracle's supplemental damages expert report. Rimini argues not that the

1 opinions or analysis in the supplemental report represented an improper measure of damages;
 2 rather, Rimini objects that the updated damages numbers in the supplemental report influenced
 3 the jury's *reference points* for the damages award. Mot. at 5:7-15. But that is not a valid
 4 objection. Rimini does not and cannot claim the updated numbers were an improper measure of
 5 damages. Even Rimini's expert increased his damages measure in his updated rebuttal report.
 6 Regardless, the jury did not award copyright damages based on lost profits, instead using the fair
 7 market value model endorsed by Rimini's expert. Dkt. 896 at 3. Rimini's claim that it suffered
 8 any undue prejudice from Oracle's supplemental damages report is pure speculation and has no
 9 support in the law.

10 **F. The Court Correctly Denied Mr. Ravin Access to Oracle's Highly**
 11 **Confidential Information**

12 Rimini seeks reconsideration of the Court's denial of Rimini's motion to modify the
 13 protective order to allow Mr. Ravin to view the highly confidential documents identified on
 14 Oracle's trial exhibit list in preparation for his trial testimony. Rimini acknowledges that the
 15 Court's denial was based on Rimini's failure to identify any specific trial exhibits Mr. Ravin
 16 needed access to in order to prepare for trial. Dkt. 592 at 3:6-7; Mot. at 5:17-24. Rimini never
 17 attempted to address the Court's concern leading up to trial. Nor does Rimini do that now.
 18 Rimini again merely references its prior arguments and makes the conclusory statement that the
 19 ruling was erroneous and impaired Mr. Ravin's trial preparation. Rimini again fails to satisfy the
 20 standard for reconsideration on this issue, and its request for reconsideration fails as a result. *See*
 21 *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255 at 1263.

22 **G. The Court Correctly Dismissed Rimini's Copyright Misuse Defense**

23 The Court correctly dismissed Rimini's copyright misuse defense at the inception of this
 24 case in 2010. Dkt. 111 at 6:14-8:17. Nonetheless, Rimini attempted to present the defense at
 25 trial, repeating the same arguments that were rejected in 2010. *Compare* Dkt. 111 at 6:19-20
 26 ("Rimini alleges that Oracle is using its existing software copyrights to unlawfully leverage a
 27 monopoly in its uncopyrightable after-market support services.") *with* Dkt. 838 at 25:20-22
 28 ("This is misuse of a copyright in software to obtain a monopoly in the software support market,

1 where Oracle has no copyright, patent, or any other right to exclude competition.”). Contrary to
 2 Rimini’s claims, the Court correctly found that Oracle “does not preclude a customer from using
 3 either a competing company or no company at all to access its support materials.” Dkt. 111 at
 4 8:2-3.

5 At trial, Rimini for the first time claimed that the Court “struck Rimini’s copyright misuse
 6 defense before the full extent of Oracle’s conduct became apparent” (Dkt. 838 at 25:24-25), but
 7 Rimini never sought to amend its complaint to add any new allegations.⁷ Nor has Rimini pointed
 8 to any new Oracle “conduct” that contradicts the Court’s holding: that Oracle “does not preclude
 9 a customer” from alternative support options. In fact, since trial, Rimini has touted to the market
 10 the opposite of what it claims:

11 Detailed testimony and evidence provided by Oracle executives and
 12 witnesses in the trial confirmed that third-party support is lawful for
 13 Oracle licensees to purchase. The evidence presented at trial
 14 supported [that] (a) Oracle licensees can choose not to renew their
 15 Oracle annual support; [and] (b) Oracle licensees can select, switch
 16 to, and use a third-party support provider or self-support instead of
 renewing and paying Oracle for annual support services These
 rights enable legal, free market choice for customers who want to
 shop a variety of different support vendors, services offerings, and
 pricing models.

17 Hixson Decl., Ex. B (Rimini 10/22/15 Rimini Press Release).

18 There is no basis to reconsider the Court’s correctly decided orders dismissing Rimini’s
 19 copyright misuse defense and excluding prejudicial evidence regarding that defense. *Crowley*,
 20 2012 WL 6513149 at *1 (motion for reconsideration “must set forth ‘some valid reason why the
 21 court should reconsider its prior decision’ and set ‘forth facts or law of a strongly convincing
 22 nature to persuade the court to reverse its prior decision’”).

23 **H. The Court Properly Construed the Relevant Licenses**

24 Rimini seeks reconsideration of the two summary judgment rulings made by this court by
 25 rehashing the same arguments it made in its opposition motions. Rimini again points to the same
 26 provisions of relevant license agreements that it argued then, again alleging that they provide a

27 ⁷ Despite Rimini’s claim that it was “denied discovery” on its dismissed copyright misuse defense
 28 (Dkt. 838 at 25:25), Rimini never moved to compel such discovery.

1 defense for Rimini's infringing conduct, but providing no new argument to justify its claim.
 2 *Compare* Mot. at 6:19-24 with Dkt. 266 (MSJ #1 Opp.) at 8-21; *compare* Mot. at 6:24-27 with
 3 Dkt. 441 (Rimini MSJ #2 Opp) at 8-16. The Court has already correctly decided the issue of
 4 license interpretation by evaluating in great detail each of the license provisions in dispute and
 5 finding no ambiguity: relevant PeopleSoft and Database licenses did not allow for Rimini's
 6 conduct. Dkt. 474 at 11-20; Dkt. 476 at 9-15. Rimini has offered nothing new for the Court to
 7 reconsider its decision. *Crowley*, 2012 WL 6513149 at *1 (motion for reconsideration "must set
 8 forth 'some valid reason why the court should reconsider its prior decision' and set 'forth facts or
 9 law of a strongly convincing nature to persuade the court to reverse its prior decision'").

10 The Court also correctly found that the terms in the PeopleSoft and Database licenses
 11 were unambiguous. Rimini does not even direct the Court to the provisions that it argues are
 12 ambiguous, nor does it present an argument—not to mention a *new* argument—for why Rimini
 13 thinks the provisions are ambiguous. Additionally, Rimini apparently seeks reconsideration of a
 14 ruling that it *won*. Rimini argues that it was prejudiced because its proposed expert, Mr. Hilliard,
 15 was not permitted to testify regarding industry custom and practice regarding the alleged
 16 ambiguity in the customer licenses. Mot. at 7:4-10. However, the Court *did* allow Mr. Hilliard to
 17 present that evidence, but Rimini chose on its own to not put that evidence forward. Tr. 2595:3-7
 18 (Court) ("[A]ssuming that Mr. Hilliard is shown to be a qualified witness to testify on the subject
 19 matter of industry custom and practice, the Court is of the view that he may testify to his opinions
 20 about the industry and the basis for forming his opinion."); Tr. 2597:1-2 (Rimini counsel) ("[W]e
 21 don't intend to go forward with Mr. Hilliard's industry practice opinions."). Rimini suffered no
 22 undue prejudice by acting on its own decisions.

23 The Court also correctly found that the JD Edwards and Siebel licenses unambiguously
 24 authorized only archival, emergency backup, or disaster-recovery testing copies. Dkt. 474 at
 25 22:9-14, 24:12-19. The Court correctly interpreted these provisions and the jury correctly found
 26 that Rimini's infringing conduct was not authorized under the licenses. Rimini has presented no
 27 new argument or evidence in order to justify a reconsideration of the Court's ruling. *Crowley*,
 28 2012 WL 6513149 at *1 (motion for reconsideration "must set forth 'some valid reason why the

1 court should reconsider its prior decision’ and set ‘forth facts or law of a strongly convincing
2 nature to persuade the court to reverse its prior decision’’).

3 **I. Rimini Provides No Basis To Challenge Any Jury Instructions**

4 Without moving for reconsideration, Rimini merely seeks to reserve a blanket objection to
5 jury instructions based on the objections it maintained in the jury instruction briefing at trial.
6 Mot. at 7:26-8:5. Not only does Rimini fail to seek reconsideration, but Rimini fails even to
7 identify all the instructions it objects to, much less point to a clear error or new facts or law that
8 would provide a basis for reconsideration for each instruction. *See Sch. Dist. No. 1J, Multnomah*
9 *Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255 at 1263. To the extent the relief Rimini seeks can be
10 construed as reconsideration, it should be denied.

11 Dated: December 14, 2015

MORGAN, LEWIS & BOCKIUS LLP

14 By /s/ Thomas S. Hixson
15 Thomas S. Hixson
16 Attorneys for Plaintiffs
Oracle USA, Inc.,
Oracle America, Inc. and
Oracle International Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2015, I electronically transmitted the foregoing ORACLE'S OPPOSITION TO DEFENDANTS' CONDITIONAL CROSS-MOTION FOR RECONSIDERATION to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

DATED: December 14, 2015

Morgan, Lewis & Bockius LLP

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